

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2008-163

**DONNA CLAUDIA BANAGAN
MASCARENAS, aka
DONNA CLAUDIA BANAGAN, aka
DONNA CLAUDIA MASCARENAS**
10227 Montford Street, N.W.
Albuquerque, New Mexico 87114

Registered Nurse License No. 486954

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, as its Decision in this matter.

This Decision shall become effective on August 15, 2008.

It is so ORDERED July 16, 2008.



FOR THE BOARD OF REGISTERED NURSING

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
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8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

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15 10227 Montford Street, N.W.
Albuquerque, New Mexico 87114

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Registered Nurse License No. 486954

17 Respondent.
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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H, R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
25 by Sherry L. Ledakis, Deputy Attorney General.

26 2. Respondent Donna Mascarenas, R.N.; aka Donna Claudia Banagen; aka
27 Donna Narlidis is represented in this proceeding by attorney Melanie Balestra, Esq., whose
28 address is 36 Santa Comba, Irvine, CA 92606.

3. On or about March 31, 1993, the Board of Registered Nursing issued Registered Nurse License No. 486954 to Donna Mascarenas, R.N.; aka Donna Claudia Banagen; aka Donna Narlidis (respondent). This license will expire on November 30, 2008, unless renewed.

JURISDICTION

4. On November 14, 2007, Accusation No. 2008-163, was filed before the Board, and is currently pending against respondent. The Accusation and all other statutorily required documents were properly served on respondent on December 7, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-163, is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2008-163. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2008-163.

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9. Respondent agrees that her Registered Nurse License No. 486954 is subject to discipline and that she is bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 486954, issued to respondent Donna Mascarenas, R.N.; aka Donna Claudia Banagen; aka Donna Narlidis is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

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1 **Criminal Court Orders:** If respondent is under criminal court orders, including
2 probation or parole, and the order is violated, this shall be deemed a violation of these probation
3 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

4 2. **Comply with the Board's Probation Program.** Respondent shall fully
5 comply with the conditions of the Probation Program established by the Board and cooperate
6 with representatives of the Board in its monitoring and investigation of the respondent's
7 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
8 within no more than 15 days of any address change and shall at all times maintain an active,
9 current license status with the Board, including during any period of suspension.

10 Upon successful completion of probation, respondent's license shall be fully
11 restored.

12 3. **Report in Person.** Respondent, during the period of probation, shall
13 appear in person at interviews/meetings as directed by the Board or its designated
14 representatives.

15 4. **Residency, Practice, or Licensure Outside of State.** Periods of
16 residency or practice as a registered nurse outside of California shall not apply toward a reduction
17 of this probation time period. Respondent's probation is tolled, if and when she resides outside
18 of California. Respondent must provide written notice to the Board within 15 days of any change
19 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
20 returning to practice in this state.

21 Respondent shall provide a list of all states and territories where she has ever been
22 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
23 provide information regarding the status of each license and any changes in such license status
24 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
25 new nursing license during the term of probation.

26 5. **Submit Written Reports.** Respondent, during the period of probation,
27 shall submit or cause to be submitted such written reports/declarations and verification of actions
28 under penalty of perjury, as required by the Board. These reports/declarations shall contain

1 statements relative to respondent's compliance with all the conditions of the Board's Probation
2 Program. Respondent shall immediately execute all release of information forms as may be
3 required by the Board or its representatives.

4 Respondent shall provide a copy of this Decision to the nursing regulatory agency
5 in every state and territory in which she has a registered nurse license.

6 **6. Function as a Registered Nurse.** Respondent, during the period of
7 probation, shall engage in the practice of registered nursing in California for a minimum of 24
8 hours per week for 6 consecutive months or as determined by the Board.

9 For purposes of compliance with the section, "engage in the practice of registered
10 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
11 work in any non-direct patient care position that requires licensure as a registered nurse.

12 The Board may require that advanced practice nurses engage in advanced practice
13 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
14 Board.

15 If respondent has not complied with this condition during the probationary term,
16 and respondent has presented sufficient documentation of her good faith efforts to comply with
17 this condition, and if no other conditions have been violated, the Board, in its discretion, may
18 grant an extension of respondent's probation period up to one year without further hearing in
19 order to comply with this condition. During the one year extension, all original conditions of
20 probation shall apply.

21 **7. Employment Approval and Reporting Requirements.** Respondent
22 shall obtain prior approval from the Board before commencing or continuing any employment,
23 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
24 performance evaluations and other employment related reports as a registered nurse upon request
25 of the Board.

26 Respondent shall provide a copy of this Decision to her employer and immediate
27 supervisors prior to commencement of any nursing or other health care related employment.

28 In addition to the above, respondent shall notify the Board in writing within

1 seventy-two (72) hours after she obtains any nursing or other health care related employment.
2 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
3 terminated or separated, regardless of cause, from any nursing, or other health care related
4 employment with a full explanation of the circumstances surrounding the termination or
5 separation.

6 8. **Supervision.** Respondent shall obtain prior approval from the Board
7 regarding respondent's level of supervision and/or collaboration before commencing or
8 continuing any employment as a registered nurse, or education and training that includes patient
9 care.

10 Respondent shall practice only under the direct supervision of a registered nurse
11 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
12 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
13 are approved.

14 Respondent's level of supervision and/or collaboration may include, but is not
15 limited to the following:

16 (a) Maximum - The individual providing supervision and/or collaboration is
17 present in the patient care area or in any other work setting at all times.

18 (b) Moderate - The individual providing supervision and/or collaboration is in
19 the patient care unit or in any other work setting at least half the hours respondent works.

20 (c) Minimum - The individual providing supervision and/or collaboration has
21 person-to-person communication with respondent at least twice during each shift worked.

22 (d) Home Health Care - If respondent is approved to work in the home health
23 care setting, the individual providing supervision and/or collaboration shall have person-to-
24 person communication with respondent as required by the Board each work day. Respondent
25 shall maintain telephone or other telecommunication contact with the individual providing
26 supervision and/or collaboration as required by the Board during each work day. The individual
27 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
28 site visits to patients' homes visited by respondent with or without respondent present.

1 9. **Employment Limitations.** Respondent shall not work for a nurse's
2 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
3 traveling nurse, or for an in-house nursing pool.

4 Respondent shall not work for a licensed home health agency as a visiting nurse
5 unless the registered nursing supervision and other protections for home visits have been
6 approved by the Board. Respondent shall not work in any other registered nursing occupation
7 where home visits are required.

8 Respondent shall not work in any health care setting as a supervisor of registered
9 nurses. The Board may additionally restrict respondent from supervising licensed vocational
10 nurses and/or unlicensed assistive personnel on a case-by-case basis.

11 Respondent shall not work as a faculty member in an approved school of nursing
12 or as an instructor in a Board approved continuing education program.

13 Respondent shall work only on a regularly assigned, identified and predetermined
14 worksite(s) and shall not work in a float capacity.

15 If respondent is working or intends to work in excess of 40 hours per week, the
16 Board may request documentation to determine whether there should be restrictions on the hours
17 of work.

18 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
19 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
20 than six months prior to the end of her probationary term.

21 Respondent shall obtain prior approval from the Board before enrolling in the
22 course(s). Respondent shall submit to the Board the original transcripts or certificates of
23 completion for the above required course(s). The Board shall return the original documents to
24 respondent after photocopying them for its records.

25 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
26 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
27 amount of \$1,372.00. Respondent shall be permitted to pay these costs in a payment plan

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1 approved by the Board, with payments to be completed no later than three months prior to the
2 end of the probation term.

3 If respondent has not complied with this condition during the probationary term,
4 and respondent has presented sufficient documentation of her good faith efforts to comply with
5 this condition, and if no other conditions have been violated, the Board, in its discretion, may
6 grant an extension of respondent's probation period up to one year without further hearing in
7 order to comply with this condition. During the one year extension, all original conditions of
8 probation will apply.

9 12. **License Surrender.** During respondent's term of probation, if she ceases
10 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
11 probation, respondent may surrender her license to the Board. The Board reserves the right to
12 evaluate respondent's request and to exercise its discretion whether to grant the request, or to
13 take any other action deemed appropriate and reasonable under the circumstances, without
14 further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent
15 will no longer be subject to the conditions of probation.

16 Surrender of respondent's license shall be considered a disciplinary action and
17 shall become a part of respondent's license history with the Board. A registered nurse whose
18 license has been surrendered may petition the Board for reinstatement no sooner than the
19 following minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any
21 reason other than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

23 13. **Therapy or Counseling Program.** Respondent, at her expense, shall
24 participate in an on-going counseling program until such time as the Board releases her from this
25 requirement and only upon the recommendation of the counselor. Written progress reports from
26 the counselor will be required at various intervals.

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14. **Violation of Probation.** If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Melanie Balestra, Esq. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement

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FROM : MASCARENAS
N/A ET 2000

FAX NO. :

May. 01 2008 03:59PM P3

1 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Board of Registered Nursing.

3 DATED: 05-01-08

4 
5 DONNA MASCARENAS, R.N.; AKA DONNA
6 CLAUDIA BANAGEN; AKA DONNA NARLIDIS
7 Respondent

8 I have read and fully discussed with respondent Donna Mascarenas, R.N.; aka
9 Donna Claudia Banagen; aka Donna Narlidis the terms and conditions and other matters
10 contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and
11 content.

12 DATED: 4/30/08

13 
14 MELANIE BALESTRA, ESQ.
15 Attorney for Respondent

16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Registered Nursing.

20
21 DATED: 5/5/08

22 EDMUND G. BROWN JR., Attorney General
23 of the State of California

24 LINDA K. SCHNEIDER
25 Supervising Deputy Attorney General

26 
27 SHERRY L. LEDAKIS
28 Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 2008-163

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

3 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General

4 California Department of Justice
110 West "A" Street, Suite 1100
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6 P.O. Box 85266
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7 Telephone: (619) 645-2078
Facsimile: (619) 645-2061

8 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **DONNA CLAUDIA BANAGAN MASCARENAS, aka**
15 **DONNA CLAUDIA BANAGAN, aka**
16 **DONNA CLAUDIA MASCARENAS**
10227 Montford Street, N.W.
Albuquerque, New Mexico 87114

17 Registered Nurse License No. 486954

18 Respondent.

Case No. *2008-163*

A C C U S A T I O N

19
20 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the
23 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
24 Affairs.

25 **Registered Nurse License**

26 2. On or about March 31, 1993, the Board issued Registered Nurse License
27 Number 486954 to Donna Claudia Banagan Mascarenas ("Respondent"), also known as

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1 Donna Claudia Banagan and Donna Claudia Mascarenas. The registered nurse license will
2 expire on November 30, 2008; unless renewed.

3 **STATUTORY PROVISIONS**

4 3. Section 2750 of the Business and Professions Code ("Code") provides, in
5 pertinent part, that the Board may discipline any licensee, including a licensee holding a
6 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
7 section 2750) of the Nursing Practice Act.

8 4. Code section 2764 provides, in pertinent part, that the expiration of a
9 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
10 against the licensee or to render a decision imposing discipline on the license. Under Code
11 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
12 years after the expiration.

13 5. Code section 2761 states:

14 The board may take disciplinary action against a certified or licensed nurse
15 or deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

17 (1) Incompetence, or gross negligence in carrying out usual
18 certified or licensed nursing functions.

19

20 **REGULATORY PROVISIONS**

21 6. California Code of Regulations, title 16, section 1442, states:

22 As used in Section 2761 of the code, 'gross negligence' includes an
23 extreme departure from the standard of care which, under similar circumstances,
24 would have ordinarily been exercised by a competent registered nurse. Such an
25 extreme departure means the repeated failure to provide nursing care as required
or failure to provide care or to exercise ordinary precaution in a single situation
which the nurse knew, or should have known, could have jeopardized the client's
health or life.

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7. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

9. On or about October 4, 2000, Respondent was on duty as a registered nurse at Calipatria State Prison, Calipatria, California. During her shift, a “mandown” was called on the yard regarding a prisoner/patient who lost consciousness.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent is subject to discipline under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about October 4, 2000, while on duty as a registered nurse at Calipatria State Prison, Calipatria, California, Respondent committed acts constituting gross negligence within the meaning of California Code of Regulations, title 16, section 1442, by failing to take vitals and assess the prisoner/patient for the first eight (8) minutes following her arrival at the scene.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

11. Respondent is subject to discipline under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about October 4, 2000, while on duty as a registered nurse at Calipatria State Prison, Calipatria, California, Respondent committed acts constituting incompetence within the meaning of California Code of Regulations, title 16, section 1443, as follows:

1 a. Respondent allowed Department of Corrections personnel to assume the
2 leadership role with regard to the resuscitation attempts on the prisoner/patient, who had no pulse
3 or respirations.

4 b. Respondent allowed unlicensed personnel to continue CPR on a medically
5 fragile prisoner/patient without knowing their level of competence.

6 c. Respondent failed to follow Calipatria State Prison Facility B Registered
7 Nurse, Post #N202 Orders by failing to accompany the prisoner/patient in the ambulance to the
8 emergency room.

9 **PRAYER**


10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 486954, issued
13 to Donna Claudia Banagan Mascarenas, also known as Donna Claudia Banagan and
14 Donna Claudia Mascarenas;

15 2. Ordering Donna Claudia Banagan Mascarenas, also known as
16 Donna Claudia Banagan and Donna Claudia Mascarenas to pay the Board of Registered Nursing
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section
18 125.3; and,

19 3. Taking such other and further action as deemed necessary and proper.
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21 DATED: 11/14/07

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23 
24 RUTH ANN TERRY, M.P.H., R.N.
25 Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant